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No. 85-1972

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

EDWARD RONWIN,

Petitioner,

vs.

HON. WILLIAM A. HOLOHAN; HON. JACK D. H. HAYS; HON. JAMES DUKE CAMERON; and HON. STANLEY G. FELDMAN,

Respondents.

REPLY BRIEF TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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ARGUMENT

Respondents urge that this Court's decision in Willner v. Committee on Character and Fitness, 373 U.S. 96, 83 S.Ct. 1175, 10 L.Ed.2d 224 (1963) does not require evidentiary hearings including confrontation

and cross-examination in all contested bar admission proceedings, (Respondents' Brief at 7-8), because the language in Willner reads, in part, 373 U.S. at 103:

> ..procedural due process often requires confrontation and cross-examination of those whose words deprive a person of his livelihood (emphasis added).

Use of the word, often, in the quotation from Willner is taken by Respondents to mean that denials of bar admission applications can be made by Respondents without any hearing either before or after denial, Respondents' Brief at 7-8.

To buttress their argument, Respondents cite Matthews v. Eldridge,424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), Respondents' Brief at 8. Matthews declared that in the context of that case, no predeprivation hearing was required, 424 U.S. 335; but Respondents fail to admit that Matthews requires, 424 U.S. at 333, 96 S.Ct. at 902:

> ...some form of hearing..before an individual is finally deprived of a property interest..The right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society..

More recently this Court voiced the same standard in Parratt v. Taylor, 451 U.S. 527, 540, 101 S.Ct. 1908, 1915, 68 L.Ed.2d 420 (1981):

> ..Our past cases mandate that some kind of hearing is required at sometime before a State finally deprives a person of his property interests...

Subsequent comment in Parratt makes it clear that the rejection of an absolute requirement of hearings in all cases prior to the initial deprivation of property interests, is based on, 451 U.S. at 541, 101 S.Ct. at 1916:

> ..the impracticality in some cases of providing any preseizure hearing under a state-authorized procedure, and the assumption that at some time a full and meaningful hearing will be available..

Willner nor Matthews are authority for what Respondents contend; i.e., that Res-

pondents can deny ten (10) applications filed by Petitioner in ten (10) years without any hearing whatsoever either before or after those denials; without any right to cross-examine and confront adverse witnesses; without any statement of charges presented at any time; and, plainly, without any due process whatsoever.

That this Court used the qualifying word, often, in Willner, see above at 2, certainly did not mean that Respondents can repeatedly deny applications without any hearing whatsoever. It is more likely that the term, often, used in Willner meant what the Court said in Matthews quoted above at 3. But, in this case, Respondents were not faced with an "impracticality" which prevented hearing before "seizure" of Petitioner's right to practice law; i.e., by denial of Petitioner's bar admission applications.

The problem is that this Court has not indicated what type of situations always require a predetermination hearing and when post-determination hearings are absolutely required.

To dispell the doubts and to clarify the thrust of Willner, which can affect other professions and occupations besides the law, and to force the Respondents, who have denied hearings to other persons in Arizona as they have Petitioner, to recognize that they have no license to blatantly deny all hearing both before and after they deny a contested bar application, this Court should hear and determine this matter.

Respondents raise the theme that the action below was barred by the doctrine of res judicata or collateral estoppel, Respondents' Brief at 16-20.

Res judicata and collateral estoppel bar the past, they cannot be given in futuro effect. Thus, the application which gave

rise to this action was never ruled upon earlier at any time. Even if it may have involved similar or identical facts to those found in earlier applications, it was removed from the next preceeding application by approximately twelve (12) months. Thereby, as this Court has held, Lawlor v. National Screen Service Corp., 349 U.S. 322, 75 S.Ct. 865, 868, 99 L.Ed. 1122 (1955), no res judicata effect applies.

But, a more important reason for denying a res judicata or collateral estoppel effect is that the right to practice law is a constitutionally protected right, Willner, supra, 373 U.S. at 103-105, 83 S.Ct. at 1180-1181; Schware v. Bd of Bar Examiners, 353 U.S. 232, 238, 77 S.Ct. 752, 756, 1 L.Ed.2d 796 (1957). That right is a continuing right; for each citizen it ends when the citizen ceases to be a citizen by death or otherwise. Just as res judicata or collateral estoppel cannot bar

the right to free speech, so those doctrines should not be allowed to forever bar a citizens right to practice law or any other profession or occupation.

CONCLUSION

For the foregoing reasons, the Writ of Certiorari sought herein by Petitioner should be granted.

Respectfully submitted

_____

Edward Ronwin

August, 1986